

The Sydney Morning Herald.

NO. 8889—VOL. LI.

FRIDAY, FEBRUARY 24, 1865.

PRICE THREEPENCE.

MARRIAGES.

On the 16th instant, by the Rev. W. Wood, at Christ Church, Hawthorn, John Henry HORN, Esq., Barrister, son of Mr. Justice H. Horn, and daughter of late Mr. J. P. Parker, Esq., of Sydney. No caris.

On the 17th instant, at Wesley Church, Cavers, Victoria, by the Rev. J. French, (brother-in-law of the bride), Mr. H. C. Pollard, of Fitzroy, son of Theophilus Pollard, Esq., to Elizabeth Pollard, of Fitzroy, daughter of Mr. A. Abraham, chemist, George-street, and third daughter of Mr. A. Abraham, chemist, George-street, and grand-daughter of the Rev. Mr. Abraham, Esq., Master House-Dwelling, Liverpool, England.

On the 23rd instant, at the Wesleyan Chapel, Newington, by the Rev. Mr. Orman, Mr. and Mrs. Green, of Newington, son of the Rev. Mr. Orman, and son of William Mason, of Tasmania, W. E. G. CHAMBERS, of Melbourne, after being instructed in the Christian religion, was baptised four years since by the above-named minister.

DEATHS.

On the 9th instant, at the Victoria River, Mr. Thomas Higgins aged 35 years, leaving a wife and four children to lament their loss.

On the 12th instant, at his residence, Rose Valley, Cooma, Munro, after a short illness, Patrick Clifford, Esq., formerly of Cooma, County Kerry, Ireland, in the 60th year of his age, leaving a wife and large circle of friends to mourn over his loss.

On the 13th instant, at Bowral, Mr. Harry Willis, Harry Willis, Henry Willoughby, surgeon, Esq., aged 65 years.

On the 23rd instant, at Campbell-street, Sydney, Gregory Ashton, the beloved son of Edward and Mary Ann Kerr, aged 13 months.

SHIP ADVERTISEMENTS.

STEAM TO ENGLAND.—WHITE STAR LINE OF STE PACKETS.—For LIVERPOOL, to sail from Melbourne in March, the splendid screw steamship ROYAL STANDARD, 2032 tons register, A1 for 22 years, G. H. DOWDALL.

This magnificent steamship has just arrived in Melbourne, and will be dispatched on her return trip about the end of March.

For rates of passage or other particulars apply to LORELL, MARWOOD, and ROME, Melbourne; or 141, Pitt-street, Sydney.

PANAMA, NEW ZEALAND, AND AUSTRALIAN ROYAL MAIL COMPANY'S steamships, performing the POSTAL SERVICE during this and the following months as under:

PRINCE ALFRED, 900 tons, H. S. NELSON for SYDNEY March 3d.

ARRIVING AT SYDNEY March 10th.

LEAVE SYDNEY FOR AUCKLAND March 15th.

TARARUA, 800 tons, J. Gardyne commander, will LEAVE SYDNEY

LEAVE WELLINGTON, PORT COOPER, and OTAGO March 15th.

OATAGO, 800 tons, W. Smith, commander, clear at the Customs TO-MORROW.

For freight or passage apply to MOLISON and BLACK.

FOR AUCKLAND.—To follow the Queen, F. HURLEY, commander, is now fast loading, and shippers are requested to send down their goods at once, to prevent disappointment. Being under charter will be dispatched on about the 20th instant.

For freight or passage apply on board, at the Patent Slip Wharf; or to LAIDLAW, IRELAND, and CO., Lloyd's Chambers.

ONLY VESSEL FOR WELLINGTON.—The Al clipper-hull FANNY FISHER, J. BROWN, commander, clear at the Customs TO-MORROW.

Shippers will please complete shipments, pass entries, and forward bills of lading for signature.

For freight or passage apply on board, at the Grafton Wharf; or to LAIDLAW, IRELAND, and CO., Lloyd's Chambers.

ONLY VESSEL FOR DUNEDIN.—To follow TO-MORROW, the regular steamer JANE LOCKHART, WILLING, master, now loading at Campbell's Wharf.

For freight or passage apply to MOLISON and BLACK.

FOR WANGANU AND TARANAKI.—The clipper-hull MARY ANN, Captain CUTHBERT, will have quick dispatch. For freight or passage, apply to T. G. SAWKINS, Exchange.

RAVEN, FOR WANGANU.—Clear at THE CUSTOMS THIS MORNING, and will leave TO-MORROW.

Shippers will please complete shipments, pass entries, and forward bills of lading for signature.

For freight or passage apply on board, at the Grafton Wharf; or to LAIDLAW, IRELAND, and CO., Lloyd's Chambers.

ONLY VESSEL FOR SAN FRANCISCO.—The Al clipper-hull ALEXANDER BAKER, 900 tons, will be dispatched on 1st March. This vessel has just completed one of the quickest voyages of the season, and passengers are invited to inspect her unrivalled accommodation in cabin and steerage.

Rates of passage—Cabin, £30; Steerage, £16.

For freight or passage apply on board, at the Patent Slip Wharf; or to LAIDLAW, IRELAND, and CO., Lloyd's Chambers.

SHIP QUEEN OF THE SOUTH, FOR LONDON.—One Saloon Cabin is still disengaged; immediate application necessary.

YOUNG, LARK, and BENNETT, WILLIS, MERRY, and CO.

FIRST SHIP FOR LONDON.—For Passengers only. To follow the Queen, F. H. V. HOLLAND, clipper-ship LIBERATOR, 1600 tons, J. H. V. HOLLAND, commander, will sail as above; has a full poop and carries only first-class passengers.

Apply to GILCHRIST, WATT, and CO., Margaret street.

MASONIC—EMERGENCY MEETING, Lodge of Harmony, THIS EVENING, at 7.30 P.M. (see page 1).

Ships will please send in bills of lading as soon, and all Amounts must be rendered by noon on FRIDAY, 24th instant.

TO PASSENGERS FOR ENGLAND.—To sail 16th MARCH, 1865.—VIMERA, 1600 tons, GREEN, commander, will follow the DUNCAN DUNBAR, and sail as above without fail.

Apply to GILCHRIST, WATT, and CO., Margaret street.

CRICKET—ALBERT CLOTH ELEVEN v. THE ROYAL ARTILLERY.—The following members of the Albert Club are requested to be on the New Ground, Redfern, at a quarter past 1 o'clock sharp, TO-MORROW (Saturday) AFTERNOON, viz.:—Armitage, Anderson, Adams, Allen, Bramley, Constance, Deane, Flood, Godward, H. G. Gorham, H. H. Gorham, Watson, with Dowser, and Napthali, emeritus.

CHARLES J. PATISON, Hon. Secy.

SHIPS EXCURSION TO MIDDLE HARBOUR on MONDAY, February 27.—The steamer VESTA will leave the Circular Quay at 10 and 1 a.m., calling at Woolloomooloo. A band will be in attendance.

Tickets, 2s. 6d.

BE EARLY AT THE POLL, THIS DAY, and VOTE FOR PEMBELL, the Man for the People.

NOTICE is hereby given, that the Partnership lately existing between Mr. H. L. RUTHERFORD, 1011 tons, H. H. FILE, commander, will sail for the above port on the 10th MARCH. This vessel has just completed the passage from China, having been away 71 days. Has splendid saloon accommodation, and carries an experienced crew.

For freight or passage apply on board at Circular Quay; or to JACOB L. MONTFOREST, 24th January.

FOR WOOL and PASSENGERS only.—For LONDON direct. To sail on the 20th MARCH, the splendid Al clipper ship ORWELL, 1200 tons, HENRY QUIN, commander. The accommodation for passengers on board this fine ship is very superior, the cabins being light and airy, and the steerage well ventilated. The ship will be loaded with wool, will have immediate despatch. Wool is now being received at Marsden's stores.

A band will be in attendance.

Tickets, 2s. 6d.

FOR LONDON.—The Al Aberdeen clipper ship STRATHDON, 1011 tons register, GEORGE H. FILE, commander, will sail for the above port on the 10th MARCH. This vessel has just completed the passage from China, having been away 71 days. Has splendid saloon accommodation, and carries an experienced crew.

For freight or passage apply on board at Circular Quay; or to JACOB L. MONTFOREST, 24th January.

FOR WOOL and PASSENGERS only.—The clipper steamship NEPTUNE, 661 tons register, ROBERT KERR, commander, fully rigged, carrying about 1400 bales wool, will meet with the utmost despatch.

A band will be in attendance.

Tickets, 2s. 6d.

NOTICE is hereby given, that the Partnership lately existing between Mr. H. L. RUTHERFORD, 1011 tons, H. H. FILE, commander, will sail for the above port on the 10th MARCH. This vessel has just completed the passage from China, having been away 71 days. Has splendid saloon accommodation, and carries an experienced crew.

For freight or passage apply on board at Circular Quay; or to JACOB L. MONTFOREST, 24th January.

FOR WOOL and CHARTER, the Barque OREGON, in first-rate order for long voyage. Particulars of outfit, stores, &c., inquire of Capt. WILSON, on board at NEWCASTLE; or R. D. MERRILL, Pitt-street.

H. R. N. S. N. CO.—Steam to the HUNTER, SATURDAY (SATURDAY NIGHT) at 11, the MORNING, 1865.

On MONDAY MORNING, at 7, the CITY of NEWCASTLE.

F. J. THOMAS, Manager, Office, foot of Market-street.

H. R. N. S. N. CO.—Shareholders may inspect Balance sheet, at the Sydney office, for half-year ended 31st January, 1865, and obtain free passage to Morpeth to attend half-yearly meetings on application to J. T. SMITH, Manager.

STEAM TO HOBART TOWN, CALLING at EDEN, TASMANIA, JOHN CLINE, commander, from Grafton Wharf, about TUESDAY, 26th instant.

WILLIS, MERRY, and CO.

FOR MORUYA RIVER.—Ketch NUMBA sails THIS EVENING. For freight, &c., apply T. M. CAFFERY, Victoria Wharf.

RICHMOND RIVER and LISMORE.—WARLOCK, first fair wind. Apply Hodder and Blair's Wharf.

FOR SHOALHAVEN.—THE CENTURION on SATURDAY NIGHT from the Victoria Wharf.

FOR MELBOURNE.—The brig SCOTIA, Captain PAIN, clear at 10 a.m., THIS DAY.

For light freight only. Apply to T. G. SAWKINS, Exchange.

FOR BOWEN, PORT DENISON.—The clipper schoner POST BOY, GASCOIGNE, master, now loading at Campbell's Wharf, will be quickly dispatched.

MOLISON and BLACK.

SHIP ADVERTISEMENTS.

LLAWARRA STREAM NAVIGATION CO.'S STEAMERS TO WOLLONGONG.—Kembla THIS DAY, at noon; and 11.30 P.M. TO-NIGHT, at 11.

CLYDE RIVER.—Kembla THIS DAY, at noon.

TURRS RIVER.—Kembla THIS DAY, at noon.

KIAMA.—Ilalong, TO-NIGHT, at 11.

SHOALHAVEN.—Ilalong, TO-NIGHT, at 11.

ULLADULLA.—Kembla on MONDAY, at noon.

MORUYA.—Kembla, on MONDAY, at noon.

MERIMBA.—Kembla, on WEDNESDAY, at noon.

FOR BRISBANE.—The barque LION will be quickly dispatched. LAIDLAW, IRELAND, and CO.

FOR ROCKHAMPTON.—The barque LION will be quickly dispatched. LAIDLAW, IRELAND, and CO.

FOR LIVERPOOL.—The barque LION will be quickly dispatched. LAIDLAW, IRELAND, and CO.

FOR MELBOURNE.—The barque LION will be quickly dispatched. LAIDLAW, IRELAND, and CO.

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THE COLENSO CONTROVERSY.

THE CASE OF THE SEE OF NATAL.

(From the Saturday Review, December 24.)

We have remarked elsewhere upon the subject of those who provoked the Colenso controversy, and we need not return to the subject. There is, however, a seed of good in all things, and the Bishop of Capetown is undoubtedly entitled to the credit of having raised the most curious and intricate set of legal questions that an English Court of law has had to deal with for many a long year. The legal and constitutional aspects of the argument which occupied the Committee of Council for four days are so important that it will probably interest our readers to be informed of their exact legal bearing. The facts upon which the case turned are few and notorious, but it may be convenient to state them shortly, in order to elucidate the questions to which they gave rise.

In 1838, the district of Natal was occupied by emigrants from the Cape, which itself was a conquered colony, and as such subject to the absolute authority of the Crown.

In 1844, the district of Natal was annexed by letters patent to the Cape Colony.

In 1850, Natal was erected into a separate government, under a Lieutenant-Governor.

In March, 1847, a Legislative Council was established in Natal.

In September, 1847, the Cape Colony and its dependencies were constituted a bishop's see, of which Dr. Robert Gray was appointed bishop. By this patent, Dr. Gray was made a suffragan to the Archbishop of Canterbury.

In 1850, representative government was granted to the Cape of Good Hope.

On the 23rd November, 1853, letters patent were issued, which stated that Bishop Gray had resigned his see, that the diocese was of inconvenient size, and that it ought to be divided into three parts, of which Natal was one. Natal was accordingly made into a diocese, and Dr. Colenso was appointed its bishop. The patent stated that the Bishop of Natal was to be "subject and subordinate to the see of Capetown and the bishop thereof," in the same manner as suffragans of Canterbury to Canterbury.

On the 8th December, 1853, letters patent were issued to Dr. Gray, by which he was appointed bishop of the new see of Capetown. By these letters it was provided that the Bishop of Capetown should "exercise metropolitan jurisdiction over the Bishops of Natal and Graham's Town," and that if any proceeding should be instituted against the Bishops of Natal or Graham's Town, such proceeding should originate and be carried on before the Bishop of Capetown. It was further provided that any person considering himself aggrieved by any sentence of the Bishop of Capetown might appeal to the Archbishop of Canterbury, who was finally to hear and determine the said appeal. The Bishop of Natal had no notice of the contents of this patent till several years after it was sealed, but on the day of its date he took an oath of canonical obedience to the Metropolitan Bishop of Capetown and his successors in the same form, *mutatis mutandis*, as a suffragan of Canterbury uses with reference to the Archbishop.

In 1863, the Bishop of Natal was cited to appear before the Bishop of Capetown to answer a charge of heresy founded on his books on the Pentateuch, and on the Epistle to the Romans. He appeared by proxy under protest, and was deprived, upon which he gave notice of his intention to appeal. He did appeal by petition to the Queen in Council. His petition prayed her Majesty either to declare that the proceedings against him were void, or the ground that they were void, and that they professed to be taken under the Queen's letters patent, or else to hear an appeal from them on the ground that, if the Bishop of Capetown had any jurisdiction at all, it was subject to such an appeal. The Bishop of Capetown, on the other hand, prayed that the Queen would not interfere; and the question argued before the Privy Council, for four days during the last and the present week, was whether or not she had jurisdiction for either of the purposes in question.

For the Bishop of Natal it was argued that the Queen ought to declare the proceedings to be null and void, if they were so, on the following grounds:—First, it was said, if the proceedings are in fact null and void, they are a grievance to the Bishop of Natal, inasmuch as they affect to deprive him of his office. Next, that grievance is done under the colour of authority conferred by the Crown. But when a royal patent, by virtue of powers supposed to be conferred by his patent, aggrieves another royal patent, the Crown ought to declare the rights of the parties under the patent. In support of this, reference was made to various cases. In one instance, the Governor of Bombay, Sir John Malcolm, interfered with the Supreme Court of Bombay, and the Crown upon petition, declared what were the limits of the authorities of the parties. In another case, the Jurats of Jersey complained of acts done by Sir William Napier, the governor; and the Queen, in that instance, being petitioned, declared the law on the points in dispute between them. Various other cases were cited in which royal declarations had been made as to the rights and powers of persons acting under royal authority, though no injury directly cognizable by civil justice had been done. On these grounds it was contended that, if the proceedings were void, the Crown, under whose authority they were ostensibly carried on, ought to say so.

Next, it was contended that, in point of fact, they were void for the following reasons:—First, because the Crown had never any right to create any court of ecclesiastical jurisdiction at all. In support of this it was said that the canon law prevails only by custom, and that, as the Crown cannot create a custom, so it cannot create a court to administer a custom. It was also said that the Crown never had created ecclesiastical courts except by statute, a notable instance of which was that Henry VIII. got the authority of Parliament to found new bishoprics. It was further argued that, if such a power ever existed, it was taken away by the statute which abolished the High Commission Court. Secondly, it was objected that, if the Crown could create an ecclesiastical court, it could not do so either in Capetown or in Natal after the grant of a separate constitutional government to those colonies. Whether the government established in Natal by the letters patent of March 1847, which were in force when the bishopric was established, formed constitutional government or not was a doubtful question; but for the Bishop of Natal it was contended that they did, inasmuch as the government was a separate one, and the letters patent contained a power of revocation, implying that they were to be in force till regularly and expressly revoked. Thirdly, it was said, that against the Bishop of Natal, at all events, that part of the letters patent of the Bishop of Capetown which affected to give him jurisdiction over the Bishop of

Natal, with an appeal to the Archbishop of Canterbury, was void, inasmuch as it derogated from the grant made ten days before to the Bishop of Natal. By the Bishop of Natal's patent he was placed in the same relation to Capetown as London to Canterbury; but London is subject and subordinate to Canterbury, with a direct appeal to the Queen. Natal, therefore, had a direct appeal to the Queen by the patent of November, and this could not be taken away by the subsequent patent of the 8th December.

For these reasons it was contended, first, that, if the proceedings in question were void, the Queen ought to declare them void; and, secondly, that they were void. In the next place, it was contended that, if the Queen would not declare the proceedings void, she ought to admit and hear an appeal from the sentence of deprivation. This demand, of course, admitted that there might be a point of view from which the proceedings might be viewed as legal, or, at least, as illegal in the sense only of being a miscarriage of justice on the part of an authority which might have acted legally. To show how this could be, the counsel for the Bishop of Natal had to explain their view of the status of the Church of England in the colonies; and they contended that it formed a voluntary society, the members of which agreed to regulate their religious affairs by so much of the ecclesiastical law of England as might be suitable to their circumstances. They asserted further that by the doctrine of the Royal Supremacy the Queen must be regarded as the voluntary head of this voluntary society, and in that capacity she possesses the same powers over the Colonial Church, by the free consent of its members, as she possesses over the Church of England, in England, by the law of the land. It was obvious enough, from passages in his judgment and from other circumstances, that the Bishop of Capetown had taken and had acted on a totally different view as to the nature of the Church—than he had supposed that the Church has laws of its own, independent of the State by which its affairs are regulated in foreign countries. The counsel for the Bishop of Natal were prepared to argue at length that this view of the Church was altogether wrong, and that the view put forward by themselves was the true one; but the Court were so clearly of that opinion that they would not allow the matter to be argued.

The Bishop of Natal's counsel, therefore, proceeded to argue that, according to the ecclesiastical law of England, an appeal lay to the Crown, if the proceedings before the Bishop of Capetown were to be considered as based on a jurisdiction given, not by the letters patent, but by the consent of the parties. And they put forward two views of the case, according to the first of which the Crown would have to hear the appeal on the merits, whilst, according to the other, the Crown would have to quash the proceedings, not as irregular and illegal in themselves, but as an excess of jurisdiction by an authority legally constituted by the consent of the parties, but acting improperly. The first view proceeded on the supposition that an archbishop in England has power to deprive a suffragan bishop for heresy. If such is the case, they argued, the Bishop of Capetown had no doubt a right to deprive the Bishop of Natal, but, by the same rule, the Bishop of Natal has a right to appeal to the Crown. They denied, however, that an English archbishop has the right in question, and they affirm that, if he has it, not but affects to exercise it, an appeal lies to the Crown on the ground of excess in jurisdiction.

The second question was whether, at this stage, the Crown had an appellate jurisdiction. As to this, it was said that the case had three aspects. Either there might be (1) no jurisdiction at all, or (2) a coercive jurisdiction, or (3) a consensual jurisdiction.

If there was no jurisdiction at all, appeal was not the proper remedy. If the Bishop of Natal suffered inconvenience from the proceedings of the Bishop of Capetown, and if those proceedings were a mere nullity, he could have them declared null by the civil courts in the colony, by a process known to the Dutch-Roman law there in force. This proceeding would be analogous to a proportion in the Queen's Bench, though more extensive. If the Bishop of Natal objected that the patent of the Bishop of Capetown was inconsistent with his own, he could have a *sicere fatus* to repeat it.

Secondly, if there were a coercive jurisdiction then the same power which gave the coercive jurisdiction to the Bishop of Capetown could regulate the course of appeal, and it had provided that the appeal was to be in the first instance to Canterbury, though from Canterbury that was nothing to show that the Bishop of Natal ever consented to such an arrangement, and at all events there was no proof at all that the Archbishop of Canterbury ever consented to it; nor could the burden of the office be laid upon him by letters patent granted to others, or assumed by him without the consent of the parties.

Lastly, as to the question of the Crown's original jurisdiction, it was said that the argument from the case of the Archbishops had not been touched. It was absurd to talk of a General Council trying an Archbishop, and to suppose *ex post facto* Acts of Parliament would be far more unconstitutional than to try bishops by commission. Moreover, the case of Donatines had not even been mentioned, and it was clear that the patron alone could deprive the incumbent of a donative.

They supported the view that the Archbishop has not the right to deprive a bishop in England by the following argument. Before the Reformation, and by the present canon law in Roman Catholic countries, the right to deprive a bishop is in the Pope, and instances were quoted in which the Pope exercised that right, or in which his right was recognised in the time of William the Conqueror, Henry I. and Henry II. By the statute (Eliz. c. i.), the Pope's powers were transferred to the Crown, and at and after the Reformation, and before the state which established the High Court, Edward VI. deprived several bishops by Royal Commissioners. There were only two cases of deprivation by the Archbishop. One was the case of Dr. Watson, Bishop of St. David's, who was deprived by Tillotson for simony, in the beginning of the eighteenth century; the other was the case of the Bishop of Clugher, deprived by the Archbishop of Armagh in 1822.

In the latter case there was no appeal, and it was the result of the whole was a consent that Capetown and Natal should be in the condition of metropolitan and suffragan, subject to a final and conclusive reference to the Archbishop of Canterbury. It was said that no other consent could be proved. The Queen consented to nothing except the patents. The Bishop of Capetown never consented to be metropolitan, except on the terms of his own patent; and the Bishop of Natal, knowing that such a patent was about to be granted, must be held to have consented to it.

The third question was whether the Crown had original jurisdiction, as visitor or otherwise, and it was argued that the Crown had no original jurisdiction otherwise than as visitor, inasmuch as the original Act of Supremacy (26 Hen. VIII. c. 1) was repealed, and the existing Act of Supremacy (1 Eliz. c. 1) did not apply. As for its visitatorial jurisdiction, it was argued that the Crown was not the visitor of the Bishop of Natal, as it had appointed the Bishop of Capetown to be visitor; nor of the Bishop of Capetown, for it had appointed the Archbishop of Canterbury to be visitor to him.

The fourth question was whether the Crown had original jurisdiction, as visitor or otherwise, and it was argued that the Crown had no original jurisdiction otherwise than as visitor, inasmuch as the original Act of Supremacy (26 Hen. VIII. c. 1) was repealed, and the existing Act of Supremacy (1 Eliz. c. 1) did not apply. As for its visitatorial jurisdiction, it was argued that the Crown ought to appoint a new bishop, and the clergy to refuse to attend visitations. Suppose that this was done, and suppose Bishop Colenso was then to take steps to get the patent of the new bishop repealed, or to deprive the clergy who refused to attend the visitation, surely both the Queen and the clergy would be in a very unsatisfactory position. Whether there is or not, there ought to be some authentic way of deciding by public authority a question of such great practical importance to a large number of people as the question whether a man is a bishop or not.

We have given the arguments in this case in full length, because they have been much misunderstood, and have not been either fully or quite correctly reported in the daily papers, and because the legal and constitutional interest of the matter is greater than that of almost any trial which has taken place of late years.

These were the arguments for the Bishop of Natal. For the Bishop of Capetown, on the other hand, it was argued, first, that the cases cited to show that the Crown ought to interfere in the manner suggested did not apply, inasmuch as they were merely cases in which the Crown issued orders to servants who might be dismissed at pleasure. It was then said that

the rest of the argument might be reduced to the three following points:

1. Had the Bishop of Capetown jurisdiction to try the Bishop of Natal, and deprive him for heresy?

2. Had the Crown jurisdiction at this stage, by way of appeal from the sentence?

3. Had the Crown original jurisdiction in the matter, visitatorial or other?

As to the first, it was contended that the Bishop of Capetown had by his letters patent a coercive jurisdiction over the Bishop of Natal, because Natal being a conquered colony, and not having a constitutional Government in 1853, when the patent was granted, it was competent to the Crown to establish the Court in question. It was said that the statute for abolishing the Court of High Commission did not extend to the colonies at all, and especially not to a conquered colony. It was admitted that the patent, if, and in so far as, it attempted to create a coercive jurisdiction, was void in Capetown, but it was contended that it was good in Natal.

As to the second, it was argued that the Bishop of Capetown had a consensual jurisdiction to deprive the Bishop of Natal from being deprived in Natal by a person competent to deprive him there? If he went to the Court at Natal, the converse difficulty would apply. How could the Court at Natal prohibit a judge from proceeding at Capetown, or make a declaration settling the right to an endowment in England?

As to the third, it was argued that the Bishop of Capetown had a consensual jurisdiction to deprive the Bishop of Natal. It was admitted that the Church of England in the colonies was a voluntary society governed by the ecclesiastical law of England, but it was argued that by that law the Archbishop could deprive. On this it was said that the Pope's power before the Reformation was usurped, that the right to deprive was always in the Archbishop, and that the Pope compromised matters by making his *legatus natus* to the see of Rome, so that he always deprived in fact; and that, when the Pope's power was abolished, the Archbishop's common law right revived. It was further said that the cases of Bonner, Gardiner, &c., in the time of Edward VI, were under a statute then in force but since repealed, and that the case of the Bishop of St. David's had the authority of nearly every court of the realm to support it, and had been recognised and acted on in the Bishop of Clogher's case under the advice of the law officers of the Crown, whose opinion was produced and read. The notion that the Queen could try a bishop by commission was described as most unconstitutional; and the question how then an appeal to the Queen was altogether wrong, and that the view put forward by themselves was the true one; but the Court were so clearly of that opinion that they would not allow the matter to be argued.

The Bishop of Natal's counsel, therefore, proceeded to argue that, according to the ecclesiastical law of England, an appeal lay to the Crown, if the proceedings before the Bishop of Capetown were to be considered as based on a jurisdiction given, not by the letters patent, but by the consent of the parties.

And they put forward two views of the case, according to the first of which the Crown would have to hear the appeal on the merits, whilst, according to the other, the Crown would have to quash the proceedings, not as irregular and illegal in themselves, but as an excess of jurisdiction by an authority legally constituted by the consent of the parties, but acting improperly. The first view proceeded on the supposition that an archbishop in England has power to deprive a suffragan bishop for heresy. If such is the case, they argued, the Bishop of Capetown had no doubt a right to deprive the Bishop of Natal, but, by the same rule, the Bishop of Natal has a right to appeal to the Crown. They denied, however, that an English archbishop has the right in question, and they affirm that, if he has it, not but affects to exercise it, an appeal lies to the Crown on the ground of excess in jurisdiction.

The second question was whether, at this stage, the Crown had an appellate jurisdiction. As to this, it was said that the case had three aspects.

Either there might be (1) no jurisdiction at all, or (2) a coercive jurisdiction, or (3) a consensual jurisdiction.

If there was no jurisdiction at all, appeal was not the proper remedy. If the Bishop of Natal suffered inconvenience from the proceedings of the Bishop of Capetown, and if those proceedings were a mere nullity, he could have them declared null by the civil courts in the colony, by a process known to the Dutch-Roman law there in force. This proceeding would be analogous to a proportion in the Queen's Bench, though more extensive. If the Bishop of Natal objected that the patent of the Bishop of Capetown was inconsistent with his own, he could have a *sicere fatus* to repeat it.

Secondly, if there were a coercive jurisdiction then the same power which gave the coercive jurisdiction to the Bishop of Capetown could regulate the course of appeal, and it had provided that the appeal was to be in the first instance to Canterbury, though from Canterbury that was nothing to show that the Bishop of Natal ever consented to such an arrangement, and at all events there was no proof at all that the Archbishop of Canterbury ever consented to it; nor could the burden of the office be laid upon him by letters patent granted to others, or assumed by him without the consent of the parties.

Lastly, as to the question of the Crown's original jurisdiction, it was said that the argument from the case of the Archbishops had not been touched. It was absurd to talk of a General Council trying an Archbishop, and to suppose *ex post facto* Acts of Parliament would be far more unconstitutional than to try bishops by commission. Moreover, the case of Donatines had not even been mentioned, and it was clear that the patron alone could deprive the incumbent of a donative.

They supported the view that the Archbishop has not the right to deprive a bishop in England by the following argument. Before the Reformation, and by the present canon law in Roman Catholic countries, the right to deprive a bishop is in the Pope, and instances were quoted in which the Pope exercised that right, or in which his right was recognised in the time of William the Conqueror, Henry I. and Henry II. By the statute (Eliz. c. i.), the Pope's powers were transferred to the Crown, and at and after the Reformation, and before the state which established the High Court, Edward VI. deprived several bishops by Royal Commissioners. There were only two cases of deprivation by the Archbishop. One was the case of Dr. Watson, Bishop of St. David's, who was deprived by Tillotson for simony, in the beginning of the eighteenth century; the other was the case of the Bishop of Clugher, deprived by the Archbishop of Armagh in 1822.

In the latter case there was no appeal, and it was the result of the whole was a consent that Capetown and Natal should be in the condition of metropolitan and suffragan, subject to a final and conclusive reference to the Archbishop of Canterbury. It was said that no other consent could be proved. The Queen consented to nothing except the patents. The Bishop of Capetown never consented to be metropolitan, except on the terms of his own patent; and the Bishop of Natal, knowing that such a patent was about to be granted, must be held to have consented to it.

The third question was whether the Crown had original jurisdiction, as visitor or otherwise, and it was argued that the Crown had no original jurisdiction otherwise than as visitor, inasmuch as the original Act of Supremacy (26 Hen. VIII. c. 1) was repealed, and the existing Act of Supremacy (1 Eliz. c. 1) did not apply. As for its visitatorial jurisdiction, it was argued that the Crown was not the visitor of the Bishop of Natal, as it had appointed the Bishop of Capetown to be visitor; nor of the Bishop of Capetown, for it had appointed the Archbishop of Canterbury to be visitor to him.

The fourth question was whether the Crown had original jurisdiction, as visitor or otherwise, and it was argued that the Crown had no original jurisdiction otherwise than as visitor, inasmuch as the original Act of Supremacy (26 Hen. VIII. c. 1) was repealed, and the existing Act of Supremacy (1 Eliz. c. 1) did not apply. As for its visitatorial jurisdiction, it was argued that the Crown ought to appoint a new bishop, and the clergy to refuse to attend visitations. Suppose that this was done, and suppose Bishop Colenso was then to take steps to get the patent of the new bishop repealed, or to deprive the clergy who refused to attend the visitation, surely both the Queen and the clergy would be in a very unsatisfactory position. Whether there is or not, there ought to be some authentic way of deciding by public authority a question of such great practical importance to a large number of people as the question whether a man is a bishop or not.

We have given the arguments in this case in full length, because they have been much misunderstood, and have not been either fully or quite correctly reported in the daily papers, and because the legal and constitutional interest of the matter is greater than that of almost any trial which has taken place of late years.

Cause and Effect.—"You say, Mr. Snooks, that the plaintiff left your house. Was it in haste?" "Yes, sir." "Do you know what caused the haste?" "I'm not quite sure, sir, but I think it was the boot of his landlord." "That will do. Clerk, call the next witness."

THE EARLY CLOSING MOVEMENT.

(From the London Daily Telegraph, December 5.)

EARLY to bed and early to rise was the motto of the London shopkeeper of the eighteenth century. In that curious collection of shrewd apothegms and common sense reasoning, "The Complete Tradesman," the various-minded Daniel Defoe has described a worthy burges of Cheapside coming down to business, fresh and airy, at seven o'clock in the morning, rubbing his hands, and saying, "Good morning, Mr. Shop! I'll take care of you, and you'll take care of me." And in this lay the whole philosophy of business in the time of our great-grandmothers. People rose early, dined at one o'clock, went about their shopping at rational hours, and rarely bought anything after dusk. The trader stuck hard to his business all day; but so soon as the sun was down up went his shutters, and away he trudged to smoke the pipe of peace at Hornsey or the Halfpenny Hatch. Hogarth's picture of "Evening" in the "Four Times of the Day" is one of the most striking illustrations of the Early Closing Movement, as it prevailed in the reign of George II. But with increased national wealth and population came luxury and bustle and excitement. People took to going to bed late, and getting up later. Tradesmen were obliged to adapt their hours to the artificial habits of their customers. In lieu of the snug, comfortable, but somewhat dark and poky shops, such as we see in Canadell's picture of Charing-cross, now in the possession of the Duke of Northumberland, numbers of pretentious establishments, replete with garish magnificence, arose. Nash, Prince of Architects, and high priest of tastelessness, was, unwittingly, the father of late shop hours. He built Regent-street. The shops of Regent-street were deemed too splendid for early closing, and myriads of gas burners were called into requisition to display their treasures to the public. The infection spread. Cheap-side, St

O. R. S. A. L. E. by the undersigned—
Woodgearing, 2d and 2d inch
Marvell, assorted sizes
Martell's and Hennessy's dark brandy, in bulk
Hennedy's, O'Farrell's, and Renault's case brandy
Carr's, and matting
Graham's case port wine
Danish and Irish rum, in case
Fine old apple rum, in case
Hick's bacon, pork
Bright Mauritius counter and crystal sugar
Cognac tea, in chests, halves, and boxes
Tennent's Ales, in jars
New Patens.

GILCHRIST, WATT, and CO.

JUST LANDED, ex DEVONSHIRE, CREST OF
WIND, VIMERA, &c., a large and choice
specimen of
COACHMAKERS' IRONMONGERY, and all other
materials required in the trade.

BADDLEY and HARRISON,
BADDLEY and HARRISON, &c., &c., in AS-
SORTED PACKAGES, to suit purchasers

ALDERSON and SONS, 221, Elizabeth-street.

BLASTING POWDER, half a BLG, in half-barrels.

LEARMONT, DICKINSON, and CO.

DAWSON'S NO. 3 ALR.—Now landing for SALE.

DAWSON, MONT, DICKINSON, and CO.

LE.—Bridport Brewery Company, in quarts. LEAR-
MONTH, DICKINSON, and CO.

LB in Bulk, just landing. Bass's and London and
Colonial Company's new brew. E. F. REGAN.

SEED POTATOES, seed Potatoes. LAW, SOMMER,
and CO., 260, Pitt-street.

POTATOES, POTATOES, the best in Sydney, 2d per
lb. M. MORAN, store, Victoria Wharf.

FRESH LOBSTERS on SALE at EMERSON'S,
Market-street.

MERCHANTS, GROCERS, and others.—All kinds of
flour will be sold at 12d per cwt, on rea-
sonable terms, at W. PRITCHARD'S, Steam Flour Mills,

ECONOMY IN HORSE FEED.—Superior (Oaten
and Linseed) Hay, Chaff, and Cracked Corn, on
the street, 2d per lb.

BAHMIN COW, and fine BULL CALF, pure breed,
brought from India in the Mail steamer, for SALE.
Apply to F. GARLAND MYLREA, 326, George-street.

POOR SALE, a small COB, thoroughly broken to
the ground, harness, &c., 210. L. and E.
HENDERSON, 674, George-street.

CAPITAL double-seated BUGGIES, carry 4 persons,
C. 35. GIBSON'S Repository, 226, Pitt-street.

PAIR BUGGY HOSES, 225, GIBSON'S Repository,
opposite School of Arts, Pitt-street.

CAPITAL Set Silver-plated Double BUGGY HARNESS,
GIBSON'S Repository, opposite School of Arts, Pitt-street.

DELIADE FLOUR.—Hart's, Bowmans, Colman's,
Clark and Dodson's, superfine and seconds, for
ALE.

H. H. BEAUCHAMP, 14, Barrack-street.

DELIADE WHEAT.—Now landing, for SALE,
for H. H. BEAUCHAMP, 14, Barrack-street.

DELIADE BRAN.—500 bags, now landing, and for
SALE, H. H. BEAUCHAMP, 14, Barrack-street.

SEED OATS.—Best prize Tasmanian, for SALE,
H. H. BEAUCHAMP, 14, Barrack-street.

DONNITH BRANDY, hogsheads, quarters, cases, for
SALE, H. H. BEAUCHAMP, 14, Barrack-street.

MUNTS YLOW METAL, 14, 16, 18, 20, 22,
24, and 26 once, for SALE; also, Rods, Spikes, and
Stockholm Tar, Pitch, Sheathing Felt, Oils, Oils,
Red Lead, &c., for SALE.

H. H. BEAUCHAMP, 14, Barrack-street.

SEWING MACHINES.—Singer and Co.'s Lock-
stitch,平缝机, are to be sold to be the
best, the simplest, and most durable sewing
machines in the world; prices from £14 to £35.

STANFORD and CO., sole agents, 208, Pitt-street.

NOW LANDING, and for SALE, by the undersigned,
a fresh lot of Lipscumb's celebrated Hobart Town
WAXS, in jars. WATKINS and LEIGH, 422, George-
street.

DELIADE WHEAT, now landing, for SALE by
BEILBY and SCOTT.

A DELIADE FLOUR.—Beby and Dunstan's superfine
Ditto household
For SALE by BEILBY and SCOTT.

A DELIADE FLOUR.—H. H. BEAUCHAMP, 14, Barrack-street.

BURT and CO. are instructed by Mr.
E. Gibb to sell by auction, the above
Yards, this day, 2d instant, at 2 o'clock.
20 young horses, suited for harness, and coaching work, a
number of them are broken in.

Young Horses.

BURT and CO. are instructed by Mr.
Thomas to sell by auction, at their Bazaar,
THIS DAY, Friday, at 11 o'clock,
10 particularly fine young horses and mares, bred at
all times, in a splendid condition, and well broken to
saddle and harness.

Now on view.

Horses.

BURT and CO. will sell by auction, at their
Bazaar, THIS DAY, Friday, at 11 o'clock,
10 young horses, from Dapto
2 ditto, ditto, Shoalhaven
1 ditto black cob
1 ditto black horse
Grey chaise
2 cart mares, very powerful; and
20 other horses.

Also, at the Camperdown Yards, at 2 o'clock,
25 young horses, broken and unbroken.

Useful Broken and Unbroken Horses.

At the Camperdown Sale Yards.

BURT and CO. will sell by auction, at their
Bazaar, THIS DAY, Friday, at 11 o'clock,
10 young horses, from Dapto
2 ditto, ditto, Shoalhaven
1 ditto black cob
1 ditto black horse
Grey chaise
2 cart mares, very powerful; and
20 other horses.

Also, at the Camperdown Yards, at 2 o'clock,
25 young horses, broken and unbroken.

Useful Broken and Unbroken Horses.

At the Camperdown Sale Yards.

M. R. C. MARTYN has received instructions
from Mr. Stephenson to sell by auction, at
the Camperdown Sale Yards, on WEDNESDAY next, at
2 o'clock,
20 strong useful horses, nearly all broken-in, and in good
condition, from the Creekwell.

PITT and SULLIVAN have received in-
structions from Mr. Richard Ridge to sell by
auction on MONDAY next, 27th instant,
100 prime fat cattle, in lots—they are from the
Mote, Lower Macquarie.

PITT and SULLIVAN have received in-
structions from P. Quinn, Esq., to sell by
auction on MONDAY next, 27th instant, at Mr. John
Fuller's, at 11 o'clock.

100 head of prime fat cattle, in lots, represented very
superior.

Butchers. Butchers. Butchers.

M. R. W. FULLAGAR has received in-
structions from Tindale, Brothers, to sell, at
Mr. John Fullagar's Yards, on MONDAY next, 27th
February, at 11 o'clock,
1000 prime fat wedders, in lots to suit purchasers.

Buyers. Buyers. Buyers.

M. R. WILLIAM TINDALE has received in-
instructions from Tindale, Brothers, to sell, at
Mr. John Fullagar's Yards, on MONDAY next, 27th
February, at 11 o'clock,
1000 prime fat wedders, in lots to suit purchasers.

Hides and Tallow.

H. R. REID will sell by public auction,
at his Stores, Clarence-street, Wynnard-
square, THIS DAY, 24th February, at quarter-past 10,
443 hides.

Terms, cash.

WEEKLY PRODUCE SALE.

MORT and CO. will sell by public auction,
at their Produce Stores, Circular Quay,
THIS DAY, 24th February, at a quarter to 11 o'clock
a.m.,

51 casks tallow
322 hides.

Terms, cash.

Weekly Produce Sale.

Tallow, Hides, &c.

JAMES GRAHAM will sell by auction, at
his Produce Stores, Circular Quay, THIS
DAY, 24th February, at half-past 11 o'clock,
Casks tallow
Hides, bones, &c.

Weekly Produce Sale.

Tallow, Hides, Bones, &c.

FOTHERINGHAM and MULLEN have
received instructions to sell by auction, on
Wright's Wharf, Sussex-street, on MONDAY next, on
27th instant, at 11 o'clock prompt,

10,000 stales, 20 x 10
10,000, 18 x 10.

30 Casks Asphalt.

10,000 Feet T. and G. White Pine, 11 inch

2 Cases Plain Glaz'd Iron, 26 gauge, &c.

For Auction Sale, on Wright's Wharf, Sussex-street, on
MONDAY MORNING next, the 27th instant, at 11 o'clock
prompt.

To Builders
To State Merchants
To Contractors
To Timber Merchants, and others.

FOTHERINGHAM and MULLEN have
received instructions to sell by auction, on
Wright's Wharf, Sussex-street, on MONDAY next, on
27th instant, at 11 o'clock prompt,

10,000 stales, 20 x 10
10,000, 18 x 10
50 casks asphalt.

10,000 Feet T. and G. white pine

10,000 clear pine.

2 cases galvanized corrugated iron, 26 gauge, 6
feet, &c., &c.

Without reserve.

Terms, sale.

Galvanized Corrugated Iron,
Gosp. Oak Brand.
Crown First Quality.

24 and 26 gauge.

24 and 26 feet lengths.

10,000 ditto ditto, 26 gauge, ditto

THE AMOUNT OF CUSTOMS DUTIES PAID TO-DAY IS AS FOLLOWS:—

	£	sd
Gin	221	10
Liquors, cordials, or strong waters	211	0
Musky	21	10
Bum	407	2
All other spirits	63	0
Wine	101	10
Tobacco and snuff	101	10
Cigars	24	10
Coffee and tea	60	2
Sugar, refined	195	0
Opium	41	10
Phosphorus	18	0
Dues	5	0
Total	£510	0

The Novelty cleared, this day, for Auckland, with gold coin worth the value of £2813.

Mr. W. Nicholson, of Maidstone, has stopped payment. His liabilities are estimated at £25,000. A meeting of his creditors is called for Tuesday next.

The several produce auctioneers held, to-day, their weekly sales of wool and sheepskins. The wool market continues depressed, and buyers are very indisposed to operate, except at reduced prices. The rates obtained to-day ranged about the same as last week, but the bidding was languid, and the high reserves placed on some lots by their owners rendered sales impossible in the present state of the market, and only caused a waste of time. The catalogues comprised about 820 bales, of which 430 were sold. Sheepskins: The supply was about the average, and prices ruled the same as last week. The following was the result of the sales:—

Messrs. Mort and Co. catalogued 579 bales of wool, but only sold about 228. The principal lots were 10 bales fleece, RWIS, at 18d.; 18 bales, P in diamond, at 16d.; 10 bales, A, at 16d.; 30 bales, MH combined, at 17d.; 58 bales, CSM, at 20d.; 32 bales, HG, at 18d. Prices ruled thus: Fleece, 15d.; to 20d.; greese, 8d.; to 10d.; scoured, 11d.; to 17d.; locks, 2d.; to 9d. Sheepskins: About 11,000 were disposed of at 6d.; to 8d. per lb.; pelts, 1d.; to 6d. per lb.

Messrs. Doham and Irwin sold to-day by auction, 132 bales of wool. The principal lots were—9 bales scoured, Graham over AL in diamond, 20d.; 28 bales, ditto over CH, 21d.; 12 bales fleece, K, 16d.; 32 bales, Coomish over SB in circle, 18d. Prices ranged as follows: Fleece, 13d.; to 14d.; scoured, 19d.; to 21d.; ditto locks, 10d.; to 1d.; greese, 5d.; to 9d. Sheepskins: About 1700 were sold at 6d.; to 8d. per lb.; pelts, 1d.; to 2d.; per lb.

Mr. O. B. Elsworth catalogued 57 bales of wool, and sold 18 at the following prices:—Scoured, 12d.; to 17d.; greese, 7d.; to 9d.; handwashed, 11d.; locks, 1d.; to 1d.; greese, 5d.; to 9d. Sheepskins: About 1700 were sold at 6d.; to 8d. per lb.; pelts, 1d.; to 2d.; per lb.

Messrs. Richardson and Wrench held their usual weekly produce sale this day. The catalogue comprised 99 bales of wool, of which a large proportion was acquired, and in consequence of their not being adequate offers for them they were withdrawn. Among the brands sold were—TAM, 14 bales fleece at 16d.; T, 2 bales fleece at 15d.; RRP, 1 bale clippings at 5d.; locks and pieces 4d.; to 13d.; sheepskins 6d.

Mr. W. Dean will offer at auction to-morrow (this day), the cargo of tea ex Spinckie, from Foo Chow; also the cargo of sugar ex Express from Mauritius.

We have papers from Melbourne to the 20th instant. The *Argus* reports as follows:—

The week, which commenced with some slight signs of returning animation in the import market, has closed with the dullness which has characterised business operations of late; and beyond trade sales, nothing of interest has occurred.

Mr. Gilligan, in second hands selling freely at £17 10s. to £22. Further parcels of tobacco items have been quitted at £1 10s. to £2 10s. The general trade has been dead.

For spirits generally there is again little more than a trade demand.

Our dates from Tasmania are to the 18th instant. The *Launceston Examiner* says:—

Business has not yet settled down after the excitement of the week past, when the arrival of the steamship *Adelaide* created some slight signs of returning

animation in the import market, has closed with the dullness which has characterised business operations of late; and beyond trade sales, nothing of interest has occurred.

Mr. Gilligan, in second hands selling freely at £17 10s. to £22. Further parcels of tobacco items have been quitted at £1 10s. to £2 10s. The general trade has been dead.

For spirits generally there is again little more than a trade demand.

The bright anticipations of coming prosperity which, a few short months ago, accompanied everything which was said, thought, and done in connection with the Billibong and Pinnacle have vanished into thin air, and these very bustling, flourishing localities have melted down into the tame, melancholy, wretched-looking scenes of their former days. At the first named place, two of the engineers have quit still for want of water, and a third is about to be removed to the Pinnacle, to some spot where water is abundant. The only engine at present on the Pinnacle has long been idle for want of what penny-a-liners are in the habit of calling the "necessary element." The fourth engine, at the Billibong, which happens to be favourably situated as regards water, hopes so to speak, for pretty steady and constant occupation. No. 2 Burnside, of the richness of which much has been said and written, has faded away into insignificance, the last remaining engine having but very unsatisfactory results. For some time past, quartz has been carted from the Pinnacle to the Alliance Company's engine, and report speaks of the yield in glowing terms; as much, in some cases, as 4 oz. to the ton having been obtained. The quartz from which this yield has been obtained is from the Ben Hall's Reef. Upon the whole, however, the reefs herabouts have not answered the expectations of the manufacturers who have started the capital enterprises in this particular; and hence the nucleus which has gone far to depopulate the Billibong and the Pinnacle. On the Forbes gold-field little needs to be said. Its progress, or rather its decline, may be summed up in a few words—little gold getting—no prospecting. Forbes, in fact, may now depend upon its grass and not upon its gold, and any attempt to prop up its auriferous character must prove futile.

The *Peak Despatch* of 4th instant supplies the following items of news from Clermont, Peak Downs:—The only engine at present on the Pinnacle has long been idle for want of what penny-a-liners are in the habit of calling the "necessary element." The fourth engine, at the Billibong, which happens to be favourably situated as regards water, hopes so to speak, for pretty steady and constant occupation. No. 2 Burnside, of the richness of which much has been said and written, has faded away into insignificance, the last remaining engine having but very unsatisfactory results. For some time past, quartz has been carted from the Pinnacle to the Alliance Company's engine, and report speaks of the yield in glowing terms; as much, in some cases, as 4 oz. to the ton having been obtained. The quartz from which this yield has been obtained is from the Ben Hall's Reef. Upon the whole, however, the reefs herabouts have not answered the expectations of the manufacturers who have started the capital enterprises in this particular; and hence the nucleus which has gone far to depopulate the Billibong and the Pinnacle. On the Forbes gold-field little needs to be said. Its progress, or rather its decline, may be summed up in a few words—little gold getting—no prospecting. Forbes, in fact, may now depend upon its grass and not upon its gold, and any attempt to prop up its auriferous character must prove futile.

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